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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/752,705

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Takashi Noguchi

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EXAMINER

CHEN, JACK S J

ART UNIT

PAPER NUMBER

2813

DATE MAILED: 08/11/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/752,705

Applicant(s)

NOGUCHI ET AL.

Examiner

Jack Chen

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5,9-13,17-21 and 29-38 is/are pending in the application.
- 4a) Of the above claim(s) 1-5,11,13,17-19 and 21 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 29-31 is/are allowed.
- 6) ☒ Claim(s) 9,10,12,20 and 32-38 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 1/8/04.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____.

DETAILED ACTION

1. Applicant's election with traverse of the invention of Group II, species III (fig. 5), with claims 1-5, 9-13, 17-21 and new claims 29-38 indicated by Applicant to read thereon, in the reply filed on December 30, 2005 is acknowledged. The traversal is on the ground(s) that the eight species identified in the instant Application are inconsistent with the species identified in the parent Application. This is not found persuasive because this is not a proper indication why the restriction requirement for the instant Application is improper.

The requirement is still deemed proper and is therefore made FINAL.

While Examiner acknowledges that Applicant indicated that claims 1-5, 11, 13, 17-19 and 21 read on the elected species, claims 1-2, 4 and 17-18 are drawn to non-elected species I and are hereby withdrawn from further consideration therefor. Similarly, claims 3, 5 and 19 are drawn to non-elected species II and are hereby withdrawn from further consideration therefor. Claims 11, 13 and 21 are drawn to non-elected species IV and are hereby withdrawn from further consideration therefor.

2. Claims 1-5, 11, 13, 17-19 and 21 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim.

Claim Status

(1) Claims canceled: 6-8, 14-16 and 22-28

(2) Claims pending: 1-5, 9-13, 17-21 and 29-38

(3) Claims withdrawn from further consideration: 1-5, 11, 13, 17-19 and 21

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(4) Claims active: 9-10, 12, 20 and 29-38

Claim Objections

3. Claims 10 and 29 are objected to because of the following informalities:

Re claim 10, line 2, the term “stain” should change to –strain--.

Re claim 29, page 8, line 3, the term “stain” should change to –strain--.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 10, 12, 20 and 32-38 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Re claim 10, the phrase “wherein said semiconductor layer having the stain effect comprises a silicon layer having a strain effect comprises a silicon layer having a strain effect” is unclear.

Re claim 32, page 9, line 11, the phrase “said gate electrode of said n-channel type field effect transistor” lacks antecedent basis.

The remaining claims 12, 20 and 33-38 are rejected for depending from the above rejected claims.

For the purpose of patentability, these claims will be interpreted as best understood.

Double Patenting

6. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

7. Claim 35 is objected to under 37 CFR 1.75 as being a duplicate of claim 34. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Wang et al., US/5,155,571.

Wang et al. discloses a semiconductor device, which comprises a p-channel type field effect transistor 10 and an n-channel type field effect transistor 12 both formed in a semiconductor layer 14/16 which has a strain effect and which is formed in an upper layer of a

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semiconductor substrate 18 (fig. 1), wherein a source/a drain 24/32 of said p-channel type field effect transistor and a source/a drain 26/28 of said n-channel type field effect transistor are formed only in said semiconductor layer 14/16 having the strain effect (fig. 1), see figs. 1-5 and cols. 1-6 for more details.

Re claim 10, wherein said semiconductor layer having the strain effect comprises a silicon layer 16 having a strain effect (fig. 1).

Reasons For Allowance

10. Claims 29-31 are allowable over the prior art of record.

11. The following is an examiner's statement of reasons for allowance: the prior art of record neither teach nor make obvious the claimed limitation of the instant application as a whole as recited in claim 29. In particular, the prior art does not teach or suggest NMOS and PMOS having respective sources and drains located only in the same silicon strain effect layer in addition to other elements as recited in the instant claim.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack Chen whose telephone number is (571)272-1689. The examiner can normally be reached on Monday-Friday (9:00am-6:30pm) alternate Monday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl W. Whitehead can be reached on (571)272-1702. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Jack Chen
Primary Examiner
Art Unit 2813

August 6, 2006